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In the District Court of the United States for the District of Colorado

Criminal 9197—Filed Oct. 18, 1940, George A. H. Fraser, Clerk

UNITED STATES OF AMERICA, PLAINTIFF

v.

LEAMON RESLER, DOING BUSINESS AS RESLER TRUCK LINE AND AS BRADY TRUCK LINE, DEFENDANT

No. 9197 Cr.

STATEMENT OF JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, plaintiff submits herewith its statement showing the basis of the jurisdiction of the said Supreme Court in the above-entitled cause.

I

The statutory jurisdiction of the Supreme Court of the United States to review by direct appeal the judgment here complained of is conferred by the Act of March 2, 1907, C. 2564, 34 Stat. 1246 (U. S. C. Title 18, Sec. 682), otherwise known as the Criminal Appeals Act, and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925.

II

The date of the decision complained of is September 20, 1940, and the date of the Application for Appeal is October 18, 1940.

III

On July 25, 1940, a criminal information containing thirteen counts was filed in the United States District Court for the District of Colorado, the first twelve counts of which charged that at various times between April 15, 1939, and August 28, 1939, the defendant Leamon Resler, doing business as Resler Truck Line and as the Brady Truck Line, unlawfully did knowingly and wilfully engage in interstate operation as a common carrier by motor vehicle by transporting for hire certain property then moving in interstate commerce, from Denver to Fort Collins, Colorado, without there being then and there in force with respect to said defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations, contrary to the statute in such case made and provided, to wit: Sec. 206 (a) Motor Carrier Act, 1935, as amended (49 U. S. Code, Sec. 306 (a)). The thirteenth count of the information related to an alleged violation over another highway route.

The defendant voluntarily appeared and filed an unverified motion to quash the information, alleging therein that the defendant had, on April 11,

1939, filed with the Interstate Commerce Commission an application to transfer to himself the operating rights of one C. J. Brady, doing business as Brady Truck Line, which had been issued to the said Brady by the Interstate Commerce Commission upon the application of said Brady bearing docket number MC 61610 in the files of said Commission, which rights included the right to engage in interstate commerce by motor vehicle between Denver and Fort Collins, Colorado; that defendant's application for the transfer to himself of the said Brady's right was on file with the Interstate Commerce Commission during all the periods covered by the informations; that at all such times the defendant neither owned nor operated twenty motor vehicles, and that not more than twenty motor vehicles, as defined by Section 213 (e) of the Motor Carrier Act, 1935, as amended (49 U. S. Code, Sec. 313 (e)), were involved in the aforesaid transfer; and that the defendant, having acquired the rights of the said Brady to operate in interstate commerce between Denver and Fort Collins, Colorado, had not operated in violation of Section 206 (a) of the Motor Carrier Act, 1935, as amended (Title 49, U. S. C., Section 306 (a)) since the Interstate Commerce Commission was without jurisdiction under the provisions of Section 213 (e) (Title 49, U. S. C., Section 313 (e)) either to approve or disapprove such a transfer where the total

number of vehicles involved was not more than twenty.

The motion to quash raised no question as to the sufficiency of any count of the information. Upon oral argument counsel for defendant stated that the motion was limited to the first twelve counts of the information, and it was so considered by the District Court.

After argument, the District Court on September 20, 1940, granted the motion to quash, as limited to the first twelve counts, but rendered no written opinion. The decision prevents any further prosecution of the defendant upon counts one (1) to twelve (12), inclusive, and, therefore, is a decision sustaining a special plea in bar when the defendant has not been put in jeopardy.

IV

The sole question involved is whether the Interstate Commerce Commission has or has not jurisdiction over transfers of operating rights from one motor-vehicle carrier to another when the total number of vehicles involved in the transaction is not more than twenty.

Section 212 (b) of the Motor Carrier Act reads as follows:

> Except as provided in Section 213, any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe.

Under the authority conferred by the foregoing section the Interstate Commerce Commission on July 1, 1938, promulgated rules and regulations governing the transfer of operating rights. Rule 1 defined generally the terms employed. Rule 2 (a) provided that applications for the transfer of operating rights should be in writing, should be verified, and should contain the information prescribed by the Commission. Rule 2 (b) provided for service upon certain interested governmental agencies. Rule 2 (c) provided as follows:

> The transfer described in any such application shall be approved if it appears from the application or from any hearing held thereon or from any investigation thereof that the proposed transaction is one which is not subject to the provisions of section 213 of the Motor Carrier Act, 1935, and that the proposed transferee is fit, willing, and able properly to perform the service authorized by the operating rights sought to be transferred, and to conform to the provisions of the Motor Carrier Act, 1935, and the requirements, rules, and regulations of the Commission thereunder. Otherwise the application shall be denied.

Section 213 covers in greater detail the subject of consolidation, merger, and acquisition of control. It provides for formal application for approval of consolidations, etc.; for notice to the Governor of each State in which the properties or

operations of the carriers affected are situated; for formal hearings; and for formal findings and order. Subsection (e) of section 213 provides, however:

> Except where a carrier other than a motor carrier is an applicant or any person which is controlled by such a carrier or carriers by railroad or affiliated therewith within the meaning of section 5 (8) of part I, the provisions of this section requiring authority from the Commission for consolidation, merger, purchase, lease, operating contract, or acquisition of control shall not apply where the total number of vehicles involved is not more than twenty.

The decision of the District Court complained of involves an interpretation of the two foregoing sections. The Court has held that since section 212 (b) commences "Except as provided in section 213 * * *," there must be read into section 212 (b) the provision of Section 213 (e) which exempts transactions involving twenty or less vehicles. This construction is contrary to the obvious intent of the two sections. Section 213 prescribes formal proceedings for any consolidation, merger, or acquisition of control broad enough to involve more than twenty vehicles. Section 212 (b) is plainly designed to cover any transfers of control which are not within the scope of section 213.

The construction of the Act which the District Court has adopted is plainly contrary to the declaration of policy expressed by Congress in section 202 (a) of the Motor Carrier Act, namely, to foster sound economic conditions in the motor-carrier industry and among motor carriers. The Commission clearly has the power to consider the financial fitness to operate of an applicant for a certificate of public convenience and necessity; and the number of vehicles involved is immaterial upon an original application for a certificate.

If the judgment of the District Court were allowed to stand, the Interstate Commerce Commission would be deprived of jurisdiction over all transfers of certificates between motor carriers where the number of vehicles involved was less than twenty. While the Commission could safeguard the public interest by investigating the fitness of the original applicant for a certificate, it would be powerless to prevent a transfer of the certificate to an unfit person. The United States contends that the foregoing considerations show that the question involved is substantial and that the decision of the District Court should be reviewed.